

IN THE SUPREME COURT OF TEXAS

No. 04-1003

ARTURO FLORES, ET AL., APPELLANTS,

v.

MILLENNIUM INTERESTS, LTD., ET AL., APPELLEES

ON CERTIFIED QUESTIONS FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Argued February 15, 2005

JUSTICE WAINWRIGHT, concurring.

In 1995, the Legislature amended chapter 5 of the Texas Property Code to address serious abuses in the acquisition of homes in the colonias. SENATE COMM. ON INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); *see also* Act of May 24, 1995, 74th Leg., R.S. Ch. 994, § 1, 1995 Tex. Gen. Laws 4982. The colonias are substandard, generally impoverished, rural subdivisions that typically lack basic utilities and other infrastructure. SENATE COMM. ON INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995). Concentrated along the Texas border with Mexico, colonia residents almost always acquire residential lots through

executory contracts called “contracts for deed” or “contracts for sale.” SENATE COMM. ON INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995). As the Court notes, in this type of contractual conveyance, legal title to the property does not transfer until after all purchase payments have been made, unlike a traditional mortgage in which legal title transfers upon closing the transaction. ___ S.W.3d at ___.

The Legislature found that purchasers had little legal protection under the contract-for-deed financing arrangement and no statutory right to critical information about the colonia property being purchased. Act of May 24, 1995, 74th Leg., R.S. Ch. 994, § 1, 1995 Tex. Gen. Laws 4982. Sellers have sold individual lots to two or more purchasers, sold lots without written contracts, and placed liens on lots subsequent to the sale without informing the purchasers and colonia residents. SENATE COMM. ON INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995). Colonia residents also complain that sellers frequently misrepresent the availability of water, sewer service, and other utilities, and that the residents are often not informed when property being sold lies in a flood plain or is otherwise unsuitable for habitation. SENATE COMM. ON INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995).

Although the Legislature considered a prohibition of contract-for-deed conveyances to end these abuses, it determined that many residents building homes in these areas need this method of financing because they do not have access to traditional mortgage financing. SENATE COMM. ON

INT’L RELATIONS, TRADE & TECH., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 336, 74th Leg., R.S. (1995); *see also* Act of May 24, 1995, 74th Leg., R.S. Ch. 994, § 1, 1995 Tex. Gen. Laws 4982. The contract-for-deed arrangement, however, allows low-income persons to purchase property and build homes on the property. Act of May 24, 1995, 74th Leg., R.S. Ch. 994, § 1, 1995 Tex. Gen. Laws 4982. To address the fraudulent and abusive conduct, the Legislature amended the statute in 2001, substantially increasing the monetary penalties and applying the protections statewide. HOUSE COMM. ON BUS. & INDUS., BILL ANALYSIS, Tex. S.B. 198, 77th Leg., R.S. (2001); *see also* Act of May 11, 2001, 77th Leg., R.S. Ch. 693, § 1, 2001 Tex. Gen. Laws 1319, 1327 (current version at TEX. PROP. CODE §§ 5.062, .077, .079).

The Legislature’s purpose is clear, but the statute’s language complicates interpretation of the statute’s provisions. This difficulty is evident in the certification of the statute’s interpretation to our Court by the U.S. Court of Appeals for the Fifth Circuit, and, in answering the question, this Court’s split decision. I join the Court’s interpretation because it fulfills the Legislature’s intent by giving effect to the penalties for a seller’s noncompliance with the statute’s disclosure requirements while not severely penalizing good faith efforts of sellers to comply.

However, the statute is deafeningly silent on the limits of the penalty. The penalty may be assessed at \$250 a day for failure to provide the annual statement, but may the monetary penalties continue to accumulate without boundary? TEX. PROP. CODE § 5.077(c)(1). The applicable statute of limitations—not identified in the statute—would set an upper limit on damages, but the amount accrued during a multi-year limitations period could exceed the property’s value by a substantial

factor, even in cases in which there is no actual harm. The punishment should fit the crime, but this statute provides no guidance on this question.

Although the statute and the Court's opinion leave open this question, the U.S. Constitution may provide an answer. Punitive damages, a type of civil penalty, have been sanctioned by both this Court and the United States Supreme Court for many years. Punitive damages punish the civil wrongdoer and provide a disincentive to such future conduct. *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 17 (Tex. 1994); *see also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). Although the states have discretion over the imposition of punitive damages, the U.S. Supreme Court has repeatedly recognized the existence of constitutional limits on these awards. *Campbell*, 538 U.S. at 416; *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433-34 (2001); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562, 568 (1996); *Honda Motor Co. v. Oberg*, 512 U.S. 415, 420 (1994); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 453-55 (1993) (plurality opinion); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991).

These cases stem from the Supreme Court's decision that constitutional limits of the states' police power to fix civil monetary punishments for illegal acts constrain the states' imposition of such fines when the "fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law." *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 107, 111 (1909). In *Waters-Pierce Oil Co.*, the Supreme Court upheld monetary fines imposed by Texas anti-trust laws. 212 U.S. at 112. In subsequent cases, the Supreme Court applied that standard to punitive damages, prohibiting the imposition of these awards in amounts that are "grossly excessive" in relation to the states' interests of retribution and deterrence. *Campbell*, 538 U.S. at 416; *Gore*, 517 U.S. at 568.

Civil penalties that arbitrarily and without reason deprive citizens of their property impinge individual rights to substantive due process. *See Campbell*, 538 U.S. at 417-18. Thus, although there are “no rigid benchmarks,” punitive damage awards exceeding a single-digit ratio between punitive and compensatory damages raise red flags. *See Campbell*, 538 U.S. at 425; *see also Gore*, 517 U.S. at 581-83; *cf. Haslip*, 499 U.S. at 23-24.

Justices dissenting to these decisions assert that the Due Process Clause erects only procedural due process hurdles to assessing civil punishment of tortfeasors and does not provide any substantive protections against excessive or unreasonable punitive damage awards. *Campbell*, 538 U.S. at 429 (Scalia, J., dissenting) (criticizing the Supreme Court’s substantive due process constitutional limitation as “insusceptible of principled application”); *see also, e.g., id.* at 430 (Thomas, J., dissenting); *Gore*, 517 U.S. at 598-99 (Scalia, J., dissenting). Notwithstanding these dissents, the Supreme Court has established that the “Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *Campbell*, 538 U.S. at 416 (majority opinion) (citing *Cooper Indus.*, 532 U.S. at 433; *Gore*, 517 U.S. at 562). Reasonableness and proportionality are required in setting the amount of these awards. *Campbell*, 538 U.S. at 426.

Because the Court decides that Millennium complied with the statute and no penalties are awardable, it is not necessary to address limits on the amount of the civil penalties in this case. However, when the Court faces this issue for decision, we will be bound by constitutional precedents of the U.S. Supreme Court.

J. Dale Wainwright
Justice

OPINION DELIVERED: September 30, 2005